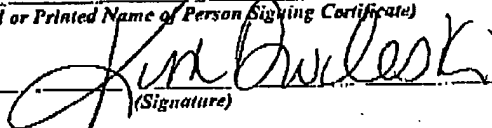


CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)			Docket No. RSW920010035US1
Applicant(s): Curtis et al.			
Application No. 09/810,629	Filing Date 3/16/2001	Examiner Reagan, James A.	Group Art Unit 3621
Invention: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE PROVIDER SUCH AS AN APPLICATION SERVICE PROVIDER			
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TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
RSW920010035US1

In Re Application Of: Curtis et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/810,629	3/16/2001	Reagan, James A.	30449	3261	

Invention: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE PROVIDER SUCH AS AN APPLICATION SERVICE PROVIDER

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Docket No. RSW920010035US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Curtis *et al.*

Examiner: Reagan, James A.

Serial No.: 09/810,629

Art Unit: 3621

Filing Date: 03/16/2001

Title: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE PROVIDER SUCH AS AN APPLICATION SERVICE PROVIDER

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF OF APPELLANT

This Appeal Brief, pursuant to the Notice of Appeal filed June 10, 2005, is an appeal from the rejection of the Examiner in the Office Action dated March 10, 2005.

REAL PARTY IN INTEREST

International Business Machines, Inc. is the real party in interest.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-42 are rejected. This Appeal Brief is in support of an appeal from the rejection of claims 1-42.

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STATUS OF AMENDMENTS

There are no After-Final Amendments which have not been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides a method for characterizing a service provider such as an Application Service Provider (ASP) or an Internet Service Provider (ISP). See specification, page 2, lines 5-8. Information may be gathered on characteristics of a service provider, such as information on performance, security, or availability of the service provider. See specification, page 3, lines 15-16. The information is analyzed by a management service to provide an outcome. See specification, page 4, lines 23-24. A report is generated responsive to the outcome, said report being generated by the management service. See specification, page 5, line 3. The report is provided by the management service to at least two clients of the service provider. See specification, page 5, lines 10-11. Providing the report to at least two clients of the service provider may comprise selling the report to the at least two clients of the service provider. See specification, page 5, lines 12-16. The report may comprise hard copy or soft copy. See specification, page 5, lines 4-7.

The information on performance of the application service provider may include information about responsiveness of the application service provider. The information about responsiveness of the application service provider may be characterized statistically by a mean value and a probability density function or cumulative distribution function that describe a time between receipt by the application service provider of an incoming request to the application

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service provider and an outgoing response from the application service provider. See specification, page 3, line 17 - page 4, line 6.

The information on security may concern a vulnerability of the service provider to attacks by unauthorized parties seeking to steal information from the service provider or to vandalize the service provider. The information on security is characterized statistically by a count or other measure of said attacks that result in adverse consequences to the service provider or in adverse consequences to one or more clients or in adverse consequences to a member of a user population over a given period of time. See specification, page 5, lines 16-21.

The information on availability of the application service provider concerns a susceptibility of the service provider to failure. Said failure may be measured by minutes-of-time-per-month when the service provider is unable to respond within a predetermined interval to an incoming request from a client or from a member of a user population. See specification, page 5, lines 7-10.

GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-42 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gershman and further in view of Brockman et al. (US 2002/0123919).

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ARGUMENT**GROUND OF REJECTION 1**

Claims 1-42 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Gershman and further in view of Brockman et al. (US 2002/0123919).

Appellants respectfully contend that claims 1, 7, 11, 15, 19, 23, and 25 are not unpatentable over Gershman in view of Brockman, because Gershman in view of Brockman does not teach or suggest each and every feature of claims 1, 7, 11, 15, 19, 23, and 25. For example, Gershman in view of Brockman does not teach or suggest the following features of claims 1, 7, 11, 15, 19, 23, and 25:

“generating a report responsive to the outcome; and ... providing the report to at least two clients of the service provider; wherein the acts of analyzing, generating, and providing are performed by a management service”,
wherein the report is responsive to the outcome derived from analyzing the information on the service provider's:

- 1) characteristics (claim 1);
- 2) performance (claims 7 and 19);
- 3) security (claims 11 and 23); and
- 4) availability (claims 15 and 27).

The Examiner argues that Gershman, Abstract, FIG. 1A, FIG. 16, and col. 34, lines 8-42 discloses the preceding features of claims 1, 7, 11, 15, 19, 23, and 25.

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In response to the Examiner's argument, Applicants contend that Gershwin's Abstract and FIG. 1A (and the description of FIG. 1A in col. 1, line 61 - col. 2, line 13) (which the Examiner relies on) has no relevance to the preceding features of claims 1, 7, 11, 15, 19, 23, and 25.

Also in response to the Examiner's argument, Appellants note that in Gershman's description of FIG. 16 in col. 34, lines 8-42 (which the Examiner relies on), the "report" is in response to a request by a user for a product report about product X (see Gershman, col. 34, lines 21-23). The report is provided to the user requesting the report, and the report comprises ratings of the product X by users who have previously rated the product X (see Gershman, col. 34, lines 25-26, 38-42). Thus, Appellants respectfully contend that:

A) Gershman, col. 34, lines 8-42 does not disclose that the user requesting the report is a **client of the service provider**, as required by claims 1, 7, 11, 15, 19, 23, and 25.

B) Gershman, col. 34, lines 8-42 does not disclose that the report is provided to **at least two clients of the service provider**, as required by claims 1, 7, 11, 15, 19, 23, and 25 (i.e., Gershman discloses the only receiver of the report to be the one who requested the report).

C) Gershman, col. 34, lines 8-42 does not disclose that the report is responsive to the outcome derived from analyzing the information on the service provider's:

- 1) characteristics (claim 1);
- 2) performance (claims 7 and 19);
- 3) security (claims 11 and 23); and
- 4) availability (claims 15 and 27).

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Gershman discloses only that the report pertains to rating the product X by users who have previously rated the product. Gershwin does not disclose what aspects of the product X are rated. Gershman does not disclose that any information about the provider of product X is in the report. Indeed, Gershman discloses only that the report includes ratings of the product X, and Gershman does not disclose that the report includes ratings of the provider of product X.

The Examiner also argues: "Gershman does teach that all types of vendors/suppliers/service providers may be targets for analysis reports (Fig 1A)."

In response, Applicants contend that the Examiner has made an unsupported allegation, because neither FIG. 1A (which the Examiner relies on) nor anything else in Gershwin teaches that "all types of vendors/suppliers/service providers may be targets for analysis reports".

In addition, Gershman does not disclose the following feature of claims 1, 7, 11, 15, 19, 23, and 25: gathering information about a service provider's:

- 1) characteristics (claim 1);
- 2) performance (claims 7 and 19);
- 3) security (claims 11 and 23); and
- 4) availability (claims 15 and 27).

Appellants assert that there is no disclosure anywhere in Gershman relating to gathering information about a service provider's characteristics, performance, security, or availability.

The Examiner argues that Gershman discloses the preceding feature of claims 1, 7, 11, 15, 19, 23, and 25 in Gershman's abstract; FIGS 1A and 1B, and col. 34, lines 8-42.

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In response to the Examiner's argument, Applicants contend that Gershwin's Abstract and FIG. 1A (and the description of FIG. 1A in col. 1, line 61 - col. 2, line 13) (which the Examiner relies on) has no relevance to the preceding features of claims 1, 7, 11, 15, 19, 23, and 25.

Also in response to the Examiner's argument, Appellants maintain that Appellants note that in Gershman's description of FIG. 16 in col. 34, lines 8-42 (which the Examiner relies on), there is no disclosure of gathering information about a service provider's characteristics, performance, security, or availability. Appellants note that Gershman, col. 34, lines 8-42, discloses an algorithm for determining the personalized product ratings of a user, which is unrelated to the preceding first feature of claims 1, 7, 11, 15, 19, 23, and 25. The Examiner has been unable to cite specific language in Gershman that allegedly discloses information about a service provider's characteristics, performance, security, or availability.

In addition, Gershman does not disclose the following feature of claims 1, 7, 11, 15, 19, 23, and 25: analyzing, to provide an outcome, the information on the service provider's:

- 1) characteristics (claim 1);
- 2) performance (claims 7 and 19);
- 3) security (claims 11 and 23); and
- 4) availability (claims 15 and 27).

Appellants note that the Examiner has not provided a citation in Gershman that allegedly teaches or suggests the preceding feature of claims 1, 7, 11, 15, 19, 23, and 25.

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In "Response to Arguments", the Examiner states: "The combination of Gershman/Brockman, clearly disclose the gathering information, analyzing it, generating reports, and providing the" reports to clients. Obviously, the first three steps are intrinsic to the reporting process, and must be completed before any form of report may be issued. Since Gershman discloses an extensive product review beginning in column 34, it is self-evident that the review of the product must be related to and applicable to the product itself. Using the same steps as disclosed by Gershman, one of ordinary skill in the art could easily modify the Gershman invention to adequately and completely disclose the instant invention. In this case, characteristics, performance, security and availability of an ISP/ASP would be appropriate descriptors of the product/service, as is the framework described by Gershman."

In response, Appellants maintain that the preceding argument by the Examiner is no more than speculation, since the Examiner has not provided any evidence from Gershman or elsewhere in the prior art to support the preceding argument by the Examiner. Moreover, Appellants respectfully contend that the Examiner's allegation that "the first three steps are intrinsic to the reporting process, and must be completed before any form of report may be issued" is incorrect and represents an speculative allegation that the Examiner has not and cannot support.

Moreover, in Gershman, col. 34, lines 8-42 which describes generating a report, what is analyzed is only the profile of users who have previously rated product X, which does not satisfy the requirement in of claims 1, 7, 11, 15, 19, 23, and 25 of analyzing the information on the service provider's:

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- 1) characteristics (claim 1);
- 2) performance (claims 7 and 19);
- 3) security (claims 11 and 23); and
- 4) availability (claims 15 and 27).

Based on the preceding arguments, Appellants respectfully maintain that claims 1, 7, 11, 15, 19, 23, and 25 are not unpatentable over Gershman in view of Brockman, and that claims 1, 7, 11, 15, 19, 23, and 25 are in condition for allowance.

Since claims 2-6 depend from claim 1, Appellants contend that claims 2-6 are likewise in condition for allowance.

Since claims 8-10 and 31-32 depend from claim 7, Appellants contend that claims 8-10 and 31-32 are likewise in condition for allowance.

Since claims 12-14 and 33-34 depend from claim 11, Appellants contend that claims 12-14 and 33-34 are likewise in condition for allowance.

Since claims 16-18 and 35-36 depend from claim 15, Appellants contend that claims 16-18 and 35-36 are likewise in condition for allowance.

Since claims 20-22 and 37-38 depend from claim 19, Appellants contend that claims 20-22 and 37-38 are likewise in condition for allowance.

Since claims 24-26 and 39-40 depend from claim 23, Appellants contend that claims 24-26 and 39-40 are likewise in condition for allowance.

Since claims 28-30 and 41-42 depend from claim 27, Appellants contend that claims 28-

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30 and 41-42 are likewise in condition for allowance.

In addition, the Examiner admits that Gershman in view of Brockman does not disclose the features specific to claims 31-42. See Section entitled "Claims 31-42" on pages 6-7 of Final Office Action mailed 03/10/2005.

The Examiner argues that the features specific to claims 31-42

"are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The information collection and storage steps would be performed the same regardless of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).... Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to collect from a service provider any type of security information, performance information, and statistical analysis thereof, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention."

In response, Appellants contend that the Examiner's argument is without foundation, because the features specific to claims 31-42 most certainly recite concrete limitations on the performance of method steps.

Claim 31 recites the limitation: "wherein the information on performance of the application service provider includes information about responsiveness of the application service provider". Thus claim 31 further limits the method step in claim 7 of "gathering information on

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performance of an application service provider" to be subject to the constraint of gathering information on performance specifically pertaining to responsiveness of the application service provider, which is most certainly a further limitation on performance of the "gathering information" step of claim 7.

Claim 32 further limits the method step in claim 31 to be subject to the constraint of gathering information specifically pertaining to responsiveness of the application service provider, such that "the information about responsiveness of the application service provider is characterized statistically by a mean value and a probability density function or cumulative distribution function that describe a time between receipt by the application service provider of an incoming request to the application service provider and an outgoing response from the application service provider", which is most certainly a further limitation on performance of the method step of claim 31 and of claim 7.

Claim 33 recites the limitation: "wherein the information on security concerns a vulnerability of the service provider to attacks by unauthorized parties seeking to steal information from the service provider or to vandalize the service provider". Thus claim 33 further limits the method step in claim 11 of "gathering information on security of an application service provider" to be subject to the constraint of gathering information on security specifically pertaining to "vulnerability of the service provider to attacks by unauthorized parties seeking to steal information from the service provider or to vandalize the service provider", which is most certainly a further limitation on performance of the "gathering information" step of claim 11.

Claim 34 further limits the method step in claim 33 to be subject to the constraint of

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gathering information specifically pertaining to security with respect to vulnerability of the service provider to attacks, such that "the information on security is characterized statistically by a count or other measure of said attacks that result in adverse consequences to the service provider or in adverse consequences to one or more clients or in adverse consequences to a member of a user population over a given period of time", which is most certainly a further limitation on performance of the method step of claim 33 and of claim 11.

Claim 35 recites the limitation: "wherein the information on availability of the application service provider concerns a susceptibility of the service provider to failure". Thus claim 35 further limits the method step in claim 15 of "gathering information on availability of an application service provider" to be subject to the constraint of gathering information on availability specifically pertaining to "a susceptibility of the service provider to failure", which is most certainly a further limitation on performance of the "gathering information" step of claim 15.

Claim 36 further limits the method step in claim 35 to be subject to the constraint of gathering information specifically pertaining to availability with respect to a susceptibility of the service provider to failure, such that "said failure is measured by minutes-of-time-per-month when the service provider is unable to respond within a predetermined interval to an incoming request from a client or from a member of a user population", which is most certainly a further limitation on performance of the method step of claim 35 and of claim 15.

Claims 37-42 are similar to claims 31-36, respectively, except that the service provider is an application service provider in claims 31-36 whereas the service provider is an Internet service

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provider in claims 37-42.

Therefore, since the Examiner has admitted that Gershman in view of Brockman does not disclose the features specific to claims 31-42, Appellants respectfully maintain that claims 31-42 are not unpatentable over Gershman in view of Brockman.

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SUMMARY

In summary, Appellant respectfully requests reversal of the March 10, 2005 Office Action rejection of claims 1-42.

Respectfully submitted,

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Docket No. RSW920010035US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Curtis *et al.*

Examiner: Reagan, James A.

Serial No.: 09/810,629

Art Unit: 3621

Filing Date: 03/16/2001

Title: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE PROVIDER SUCH AS AN APPLICATION SERVICE PROVIDER

Commissioner For Patents
P.O. Box 1450
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APPENDIX A - CLAIMS ON APPEAL

1. A method for characterizing a service provider, comprising the acts of:
 - a) gathering information on characteristics of a service provider;
 - b) analyzing the information to provide an outcome;
 - c) generating a report responsive to the outcome; and
 - d) providing the report to at least two clients of the service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.
2. The method of claim 1, wherein the service provider is an ASP.
3. The method of claim 1, wherein the service provider is an ISP.

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4. The method of claim 1, wherein the act of providing comprises the act of selling the report.
5. The method of claim 1, wherein the report comprises hard copy.
6. The method of claim 1, wherein the report comprises soft copy.
7. A method for a management service to advise a client of an application service provider regarding the performance of the application service provider, comprising the acts of:
 - a) gathering information on performance of an application service provider;
 - b) analyzing the information to provide an outcome;
 - c) generating a report responsive to the outcome; and
 - d) providing the report to at least two clients of the application service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.
8. The method of claim 7, wherein the act of providing comprises the act of selling the report.
9. The method of claim 7, wherein the report comprises hard copy.
10. The method of claim 7, wherein the report comprises soft copy.
11. A method for a management service to advise a client of an application service provider regarding the security of the application service provider, comprising the acts of:

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- a) gathering information on security of an application service provider;
- b) analyzing the information to provide an outcome;
- c) generating a report responsive to the outcome; and
- d) providing the report to at least two clients of the application service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.

12. The method of claim 11, wherein the act of providing comprises the act of selling the report.

13. The method of claim 11, wherein the report comprises hard copy.

14. The method of claim 11, wherein the report comprises soft copy.

15. A method for a management service to advise a client of an application service provider regarding the availability of the application service provider, comprising the acts of:

- a) gathering information on availability of an application service provider;
- b) analyzing the information to provide an outcome;
- c) generating a report responsive to the outcome; and
- d) providing the report to at least two clients of the application service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.

16. The method of claim 15, wherein the step of providing comprises the act of selling the report.

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17. The method of claim 15, wherein the report comprises hard copy.

18. The method of claim 15, wherein the report comprises soft copy.

19. A method for a management service to advise a client of an Internet service provider regarding the performance of the Internet service provider, comprising the acts of:

a) gathering information on performance of an Internet service provider;

b) analyzing the information to provide an outcome;

c) generating a report responsive to the outcome; and

d) providing the report to at least two clients of the Internet service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.

20. The method of claim 19, wherein the act of providing comprises the act of selling the report.

21. The method of claim 19, wherein the report comprises hard copy.

22. The method of claim 19, wherein the report comprises soft copy.

23. A method for a management service to advise a client of an Internet service provider regarding the security of the Internet service provider, comprising the acts of:

a) gathering information on security of an Internet service provider;

b) analyzing the information to provide an outcome;

- c) generating a report responsive to the outcome; and
 - d) providing the report to at least two clients of the Internet service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.
24. The method of claim 23, wherein the act of providing comprises the act of selling the report.
25. The method of claim 23, wherein the report comprises hard copy.
26. The method of claim 23, wherein the report comprises soft copy.
27. A method for a management service to advise a client of an Internet service provider regarding the availability of the Internet service provider, comprising the acts of:
- a) gathering information on availability of an Internet service provider;
 - b) analyzing the information to provide an outcome;
 - c) generating a report responsive to the outcome; and
 - d) providing the report to at least two clients of the Internet service provider; wherein the acts of analyzing, generating, and providing are performed by a management service.
28. The method of claim 27, wherein the step of providing comprises the act of selling the report.
29. The method of claim 27, wherein the report comprises hard copy.

30. The method of claim 27, wherein the report comprises soft copy.

31. The method of claim 7, wherein the information on performance of the application service provider includes information about responsiveness of the application service provider.

32. The method of claim 31, wherein the information about responsiveness of the application service provider is characterized statistically by a mean value and a probability density function or cumulative distribution function that describe a time between receipt by the application service provider of an incoming request to the application service provider and an outgoing response from the application service provider.

33. The method of claim 11, wherein the information on security concerns a vulnerability of the service provider to attacks by unauthorized parties seeking to steal information from the service provider or to vandalize the service provider.

34. The method of claim 33, wherein the information on security is characterized statistically by a count or other measure of said attacks that result in adverse consequences to the service provider or in adverse consequences to one or more clients or in adverse consequences to a member of a user population over a given period of time.

35. The method of claim 15, wherein the information on availability of the application service provider concerns a susceptibility of the service provider to failure.

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36. The method of claim 35, wherein said failure is measured by minutes-of-time-per-month when the service provider is unable to respond within a predetermined interval to an incoming request from a client or from a member of a user population.

37. The method of claim 19, wherein the information on performance of the application service provider includes information about responsiveness of the application service provider.

38. The method of claim 37, wherein the information about responsiveness of the application service provider is characterized statistically by a mean value and a probability density function or cumulative distribution function that describe a time between receipt by the application service provider of an incoming request to the application service provider and an outgoing response from the application service provider.

39. The method of claim 23, wherein the information on security concerns a vulnerability of the service provider to attacks by unauthorized parties seeking to steal information from the service provider or to vandalize the service provider.

40. The method of claim 39, wherein the information on security is characterized statistically by a count or other measure of said attacks that result in adverse consequences to the service provider or in adverse consequences to one or more clients or in adverse consequences to a member of a user population over a given period of time.

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41. The method of claim 27, wherein the information on availability of the application service provider concerns a susceptibility of the service provider to failure.

42. The method of claim 41, wherein said failure is measured by minutes-of-time-per-month when the service provider is unable to respond within a predetermined interval to an incoming request from a client or from a member of a user population.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Curtis *et al.*

Examiner: Reagan, James A.

Serial No.: 09/810,629

Art Unit: 3621

Filing Date: 03/16/2001

**Title: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE
PROVIDER SUCH AS AN APPLICATION SERVICE PROVIDER**

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APPENDIX B - EVIDENCE

There is no evidence entered by the Examiner and relied upon by Appellants in this
appeal.

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**Title: IMPROVED METHOD FOR REPORTING CHARACTERISTICS OF A SERVICE
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APPENDIX C - RELATED PROCEEDINGS

There are no proceedings identified in the "Related Appeals and Interferences" section.

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